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No. 1240

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1967

L. A. DAVIDSON,

Petitioner,

vs.

MICHIGAN DEPARTMENT OF REVENUE,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN[1]

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BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN[1]

Respondent opposes the Petition for Writ of Certiorari to the Court of Appeals of the State of Michigan relative to its Order dated September 18, 1967, Docket No. 2522, on the following grounds:

1. The petition does not properly raise any substantial federal question.

2. The only federal question sought to be raised by the

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[1] Unless otherwise plainly indicated, numbers in parentheses refer to pages of the Petition for Writ of Certiorari to the Court of Appeals of the State of Michigan.

Petition has been conclusively adjudicated by this Court contrary to the Petition.

3. The Order of the Court of Appeals from which appeal is sought is conclusive.

The Order reads in pertinent part as follows:

"In this cause a motion for a peremptory order, in accordance with GCR 1963, 820.1(7), reversing the judgment of the Ingham County Circuit Court, is filed, and a brief in opposition thereto having been filed, and due consideration thereof having been had by the Court,

"IT IS ORDERED that the motion for a peremptory order be, and the same is hereby GRANTED, for the reason that the contrary holding on the same issue by the Supreme Court in *Walter Toebe & Co.* v. *Revenue Department* (1967), 378 Mich 617, is dispositive of the matter. The case is remanded to the Ingham County Circuit Court with instructions to render a determination of the other issues involved.

"IT IS FURTHER ORDERED that the motion to affirm be, and the same is hereby DENIED." (1a-2a)

OPINIONS BELOW

There are no opinions of the courts below other than the above-referred-to Order that touches upon the intergovernmental immunity question sought to be raised by petitioner in this cause. Opinions referred to in the Petition relate to nonfederal and equal protection questions.

The Opinion of the Ingham County (Michigan) Circuit Court denying respondent's Motion to Dismiss (5a) upon which the final Judgment of the Ingham County (Michigan) Circuit Court was based, was reversed by the Michigan Court of Appeals' Peremptory Order (1a) on authority of

> *Walter Toebe & Co.* v. *Revenue Department* (1967), 378 Mich 617, 148 NW 2d 775 (19a-27a), (hereinafter referred to as the *Toebe* cases).[2]

JURISDICTION

The petitioner attempts to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(3). For the reasons set forth herein, the Petition should be denied.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Respondent believes there is no constitutional provision involved. The question before the Michigan Court of Appeals was whether petitioner's cause presented any different classification question than that involved in the *Toebe* cases. Proceedings before the Michigan Court of Appeals, culminating in its Peremptory Order (1a), could not raise the question of the correctness of the Michigan Supreme Court's conclusion in the *Toebe* cases that § 4(m)

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[2]

In the *Toebe* cases, the Michigan Supreme Court found the classification here involved did not violate the equal protection and due process provisions of the Fourteenth Amendment of the United States Constitution. Petitioner participated in the *Toebe* cases as *amicus curiae*.

of the Michigan Use Tax Act, as amended by Act 272, Michigan Public Acts of 1959, did not deny petitioner due process or equal protection of the laws within the purview of the Fourteenth Amendment of the Constitution of the United States.

Contrary to the statement of petitioner on page 4 of its Petition, Act 263 of the Michigan Public Acts of 1959 was effective September 1, 1959, and not 1960. Section 4(m) of the Use Tax Act as amended by Act 263, Michigan Public Acts of 1959, is not an issue in this cause, but rather the statute as amended by Act 272, Michigan Public Acts of 1959,[3] effective January 1, 1960, which, as modified by the case of *Knapp-Stiles* v. *Department of Revenue* (1963), 370 Mich 629, 122 NW 2d 642, reads:

> "(m) Property purchased by persons engaged in the business of constructing, altering, repairing or improving real estate for others when property so purchased by such persons shall be affixed and made a structural part of real estate or used and completely consumed in the fulfillment of a single contract within the exempt classifications set forth in subsections (b), (i), (j) and (k) of this section other than * * * the state of Michigan, its departments or institutions; or which shall not be affixed and made a structural part of real estate but shall be transferred to a person in fulfillment of a contract with such person for his use for an exempt purpose as set forth in subsection (f) or (g) of this section."

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[3]

[Act 94, Michigan Public Acts of 1937, as amended Mich Comp. Laws Mason's '61 Supp. § 205.94(m); Stat Ann 1960 Rev Vol § 7.555(4) (m) (incorrectly cited as Mich Stat Ann § 21.555 (1) on page 3 of the Petition and as Act No. 273 on page 10 of the Petition)].

While the petitioner asserts that there is here involved the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (3, 28a), the order of the Michigan Court of Appeals relates solely to petitioner's argument that § 4(m) of the Michigan Use Tax Act

> "* * * constitutes a clear and hostile discrimination against contractors with the Michigan State Highway Department with the objective of imposing the economic burden of a tax on the funds contributed by the United States under the Federal Highway Act adopted on August 27, 1958 (72 Stat 885; Title 23, U.S. Code, Section 101, etc.) and violates the constitutional immunity of the United States from state taxation." (Petitioner's Complaint, paragraph 19).

QUESTION PRESENTED

The respondent disagrees with the statement of questions presented by petitioner. They are at variance with the pleadings in this cause and the issues as framed and passed upon by the courts below. The question is whether the Michigan Supreme Court in denying petitioner's Application for Leave to Appeal, or the Michigan Court of Appeals by entering its Peremptory Order of September 18, 1967, contravened any federal constitutional right of the petitioner. Furthermore, to the extent that the pleadings in this cause could in any way raise an intergovernmental immunity question, it would have to be framed within the scope of petitioner's allegations in paragraphs enumerated "3" and "19" of its Declaratory Judgment Complaint which is to the effect:

1. That petitioner is engaged in the business of

constructing highways and bridges for the Michigan State Highway Department or various political subdivisions of the State of Michigan, and since 1959 petitioner's highway construction contracts involved projects on the Interstate System, almost exclusively.

2. That under these circumstances the State of Michigan cannot impose a use tax on tangible property which petitioner uses in its highway construction work without imposing a like tax on tangible property used in construction projects for local Michigan governmental units.

Respondent believes the question is appropriately framed as follows:

Did the Michigan Court of Appeals unconstitutionally discriminate against a person doing business under contracts with state government when it granted the respondent's Motion for a Peremptory Order for the reason that the classification issues raised in this cause were properly resolved against the petitioner by the Supreme Court in *Walter Toebe & Co.* v. *Revenue Department, supra* (1967), 378 Mich 617, 148 NW 2d 775?

STATEMENT OF THE CASE

Respondent cannot accept petitioner's statement of the case. The admitted pleadings and a Stipulation of Facts filed in this cause contain the only facts. Petitioner filed a Complaint for Declaratory Relief in the Ingham County (Michigan) Circuit Court, alleging therein that he is a person engaged in the construction of roads and bridges for the State of Michigan and its political subdivisions,

and since 1959 did work almost exclusively on projects on the Interstate System.

Petitioner further alleges that the State of Michigan seeks to unconstitutionally impose a use tax on the tangible personal property acquired by it in the fulfillment of a single contract with the State of Michigan, without imposing a like tax under similar circumstances on tangible personalty used by those doing business with the political subdivisions of the State of Michigan. This is alleged in paragraph "19" of the Complaint as follows:

> "19. To the extent that said Use Tax Act is construed and applied so as to impose upon plaintiff a Use Tax with respect to property purchased and affixed and made a structural part of real estate or used and completely consumed in the fulfillment of a single contract with the State of Michigan and its departments, while exempting from said Use Tax property purchased by contractors in fulfillment of similar contracts with political subdivisions of the State of Michigan, the said Use Tax Act contravenes and is repugnant to the Constitution of the United States of America and to the Constitution of the State of Michigan * * * ."

In the trial court, the respondent filed a Motion to Dismiss the Complaint for the reason that the petitioner had not set forth a cause of action as a matter of law. For reasons set forth in its Opinion of December 3, 1962 (5a-16a), respondent's Motion to Dismiss was denied by Order of the Circuit Court. The Court there opined:

> "It is impossible for this Court to reasonably conceive of any facts in this case to sustain this classification so that road contractors doing business with

the State should pay the tax and road contractors doing business with, for example, a county should not pay the tax. Such legislation is, in our opinion, patently unreasonable, palpably arbitrary, discriminatory and wholly illusory. What the Legislature in effect has done is to arbitrarily split or divide a natural class without reason therefor and then treat the two differently." (14a)

After denial of the respondent's Motion to Dismiss, the cause proceeded to trial. In the Declaratory Judgment dated July 18, 1966, (3a-4a) the Circuit Court affirmed its opinion of December 3, 1962, which was concerned solely with the uniformity and equal protection classification problems posed by § 4(m) of the Michigan Use Tax Act, as amended by Act 272 of the Michigan Public Acts of 1959.[4]

Subsequent to the Judgment of the Circuit Court, the companion cases of *Walter Toebe & Co.* v. *Department of Revenue* and *Toebe-Hull Co.* v. *Department of Revenue, supra* (1967), 378 Mich 617, 148 NW 2d 775, were appealed directly to the Michigan Supreme Court, which direct appeal is allowed under Michigan General Court Rules of 1963 in unusual circumstances where there are involved questions of great public importance. The State of Michigan also appealed the instant cause to the Michigan Court of Appeals.

After the Michigan Supreme Court had accepted jurisdiction in the *Toebe* cases and while they were pending in the Michigan Supreme Court, the petitioner in this cause requested permission of the Michigan Supreme

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[4] Ibid.

Court to take a direct appeal in order that the *Toebe* cases and this cause might be disposed of together. In his application requesting the Michigan Supreme Court to grant a direct appeal, the petitioner stated:

> "Should the plaintiff and appellee be forced to await a decision on a presentation of this case to the Court of Appeals, this Court might, meanwhile, dispose of the two appeals before it [*Toebe* cases] involving the same question and the plaintiff and appellee be thereby deprived of the right to present his position to this court before its decision." [Bracketed material added]

Petitioner's request was denied. The Michigan Supreme Court, however, in its order of denial, invited the petitioner to participate in the *Toebe* cases as *amicus curiae*, which was done by petitioner. In the interim, the parties stipulated in the Michigan Court of Appeals that any further proceedings in this cause await the final disposition of the *Toebe* cases.

After final disposition of the *Toebe* cases (which held § 4(m) of the Use Tax Act as amended by Act 272, Michigan Public Acts of 1959, to be constitutional), the respondent herein filed a Motion in the Michigan Court of Appeals for a Peremptory Order Reversing the Declaratory Judgment of the Circuit Court in this cause for the reason that the *Toebe* cases were dispositive of all questions at issue in this cause. This motion was granted September 18, 1967 (1a-2a).

The petitioner resisted the respondent's request for Peremptory Order with the argument that (1) unlike in the *Toebe* cases he had not included the use tax as an element in his bids for contracts with the Michigan State Highway

Department, and (2) that there is here involved a question of governmental immunity that was not raised in the *Toebe* cases.

The petitioner complains of the refusal by the Michigan Court of Appeals (and the Michigan Supreme Court in denying the petitioner's Application for Leave from the Peremptory Order of the Court of Appeals) (16a-17a) to accept the petitioner's contention that this case is distinguishable from the *Toebe* cases.

The facts firmly establish that the property purchased by petitioner upon which use tax was assessed was used and completely consumed in the fulfillment of his contracts with the State of Michigan. Further, it is not known upon whom would fall the economic burden of the tax here involved.

ARGUMENT

I.

THE PETITION DOES NOT RAISE ANY SUBSTANTIAL FEDERAL QUESTION.

The petitioner sets forth three reasons why this Court should grant his request for Writ of Certiorari:

First, he contends that the Peremptory Order of the Court of Appeals resulted in

> "• • • an unconstitutional discrimination against the United States government and the persons dealing with it. *Phillips Chemical Company* v. *Dumas Independent School District*, 361 U.S. 376 (1959)." (8)

Secondly, petitioner urges this Court to grant the Writ because the *Toebe* cases represent bad law, and are distinguishable from the case at bar inasmuch as here the petitioner allegedly will have to bear the economic burden of any use tax while in the *Toebe* cases this burden was borne by the State of Michigan.

Thirdly, petitioner argues that he has been denied equal protection and due process of law as a result of the classification employed by the Michigan Legislature in § 4(m) of the Michigan Use Tax Act as amended by Act 272, Michigan Public Acts of 1959, *supra*.

1. **As to petitioner's first contention, he has not properly raised any intergovernmental immunity question.** Petitioner possesses no privity with the federal government. The case of

> *Phillips Chemical Co.* v. *Dumas School Dist.* (1959), 361 US 376; 80 S Ct 474; 4 L ed 2d 384

relied upon by petitioner, clearly demonstrates that the intergovernmental immunity question is concerned only with discrimination against the United States government, its agents, instrumentalities and persons dealing with it (8). Since petitioner could not establish that he has used and consumed the tangible personal property in question in his dealings with the federal government, and since he could not show that he has been singled out and subjected to discrimination on this account, he has not properly raised an intergovernmental immunity question. *Phillips Chemical, supra,* requires only

> "* * * that the State treat those who deal with the government [federal] as well as it treats those with

whom it deals itself."[5] (361 US 376, 385). [Bracketed material added]

The matter in this cause concerns the State of Michigan and its political subdivisions and those doing business with them. Neither the United States government nor those doing business with it are remotely involved or concerned with the question here posed under the facts and circumstances of this cause. This fact constituted the basis for the Michigan Court of Appeals' Order of September 18, 1967, and its conclusion that *Walter Toebe & Co.* v. *Revenue Department, supra,* (1967), 378 Mich 617, 148 NW 2d 775, rather than *Knapp-Stiles* v. *Department of Revenue, supra,* (1963), 370 Mich 629, 122 NW 2d 642, controlled the disposition of this cause.

The assertion by the petitioner that its construction work for the period in question (January 1, 1960 through August 27, 1964) was almost exclusively on Interstate Highway projects does not establish a contractual relationship or privity between petitioner and the federal government nor does it place the federal government in the position of bearing any economic burden of the use tax in question. This assertion does not even establish that petitioner's

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[5]

The constitutional restrictions imposed on a state's power to classify those dealing with the federal government for tax purposes as set forth in *Phillips Chemical, supra,* may be summarily stated as follows:

1. Those dealing with the federal government may not be singled out to bear a tax burden not imposed on others similarly situated;
2. The classification must not constitute an invidious discrimination or be palpably arbitrary;
3. The classification must rest upon some ground or differences having a fair and substantial relation to the object of the legislation and legitimate state policy.

contracts with the State of Michigan involved construction work for which the State received any reimbursement from the federal government.[6]

2. **Whether the ultimate economic burden of the use tax is borne by petitioner or the government is immaterial and such inquiry does not properly raise any federal question.** If, as now alleged by petitioner, he did not include any use tax in his bids for the construction work in question, he is required to absorb any economic burden related to the use tax. If, contrary to such allegation, the economic burden of the use tax in question was in fact passed on to both state and federal government, petitioner would be in the windfall position that he attributes to the taxpayers in the *Toebe* cases (14-15).

Furthermore, assuming that petitioner's bids for con-

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[6] While the record is silent concerning the amount and method of payment on construction contracts on the Interstate System, we understand that the following is the practice, in accordance with law, of the Michigan Department of State Highways: The contractor submits all billings for his work directly to the Michigan Department of State Highways. Payments are made thereon from funds of that department. After the contractor has been paid, the department then submits billings in the amount of the payments to the Bureau of Public Roads, which reviews the billings and makes its proportionate reimbursement on those phases of construction which meet with approval, for participation purposes, of the Bureau. On any given contract there may be one or more phases of construction for which the Federal Bureau of Public Roads will not reimburse the Michigan State Department of Highways for its construction costs. For example, reimbursement will normally be denied as to construction costs resulting from the state's inability to obtain the highway right-of-way; premium time in order to complete a project; additional costs incurred by use of a higher grade of materials than called for by the U. S. Bureau of Public Roads, and for some costs relating to the maintenance of traffic controls.

struction contracts with the State included an amount for use tax, there is nothing in the record that could constitute a basis for allocating this use tax between those construction expenses that might be ultimately borne by the United States government and those expenses ultimately borne by the State of Michigan.

In any event, these allegations concerning the ultimate economic burden are not dispositive of either equal protection or intergovernmental immunity questions.

3. **Petitioner has not properly brought before this court a Fourteenth Amendment equal protection question.** The constitutionality of the classification here involved was specifically considered by the Supreme Court of Michigan in *Walter Toebe & Co.* v. *Revenue Department, supra,* (1967), 378 Mich 617, 148 NW 2d 775. [The opinion in that cause is set forth in the Petition as Appendix B (18a-27a)].

Petitioner participated as *amicus curiae* in the Supreme Court in the *Toebe* cases. He did not interject any equal protection argument in defense of the respondent's Motion to Dismiss this cause in the Michigan Court of Appeals, which resulted in the Order of Dismissal here involved. Thus, petitioner elected to hold this cause in abeyance and rely upon the *Toebe cases* for adjudication of the equal protection question and ought not be permitted to belatedly raise this question on this appeal.[7]

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[7] In fact, petitioner requested delay by the Court of Appeals in disposition of the respondent's Motion to Dismiss until the time expired for *Toebe, supra,* to be appealed to this court.

II.

THE ONLY FEDERAL QUESTIONS SOUGHT TO BE RAISED BY THE PETITION HAVE BEEN CONCLUSIVELY ADJUDICATED BY THIS COURT CONTRARY TO PETITIONER'S PETITION

A state legislature is authorized to classify, as in the instant case, for tax purposes, as is shown by excerpts from the opinion of the Michigan Supreme Court in *Walter Toebe & Co.* v. *Revenue Department, supra,* (1967), 378 Mich 617, 625, 148 NW 2d 775, 778. In upholding this classification, the Supreme Court of Michigan quoted in part as follows from *Phillips Chemical Co.* v. *Dumas Independent School District, supra,* (1959), 361 US 376; 80 S Ct 474; 4 L ed 2d 384, 390-391:

> " 'We have made it clear, in the equal protection cases, that our decisions in that field are not necessarily controlling where problems of intergovernmental tax immunity are involved. In *Allied Stores* v. *Bowers* [358 US 522], for example, we noted that the State was "dealing with [its] proper domestic concerns, and not trenching upon the prerogatives of the National Government." 385 U.S., at 526. When such is the case, the State's power to classify is, indeed, extremely broad, and its discretion is limited only by constitutional rights and by the doctrine that a classification may not be palpably arbitrary. * * *' "

In reference to the equal protection classification problem, the Michigan Supreme Court in the *Toebe* cases stated as follows (378 Mich 622-624; 148 NW 2d 777-778):

"We agree with appellant that there exist many basic differences between the State and its subdivisions that would justify the legislature exempting the tax on materials used in constructing county, city and village roads and not State roads, and we have stated in cases like the present that it is not the function of this Court to consider the propriety or justness of the tax, nor to criticize the public policy which adopted the legislation. See *W. S. Butterfield Theatres, Inc.*, v. *Department of Revenue* (1958), 353 Mich 345.

"The question presented is whether one group of contractors is favored over another group and is not whether the counties, cities and villages are favored over the State."

This Honorable Court has recognized a reasonably wide authority of legislative classification.

As stated in

Citizens' Telephone Co. v. Fuller (1912), 229 US 322, 331; 33 S Ct 833; 57 L ed 1206:

"* * * Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. Keeney v. New York, 222 U.S. 536, 56 L. ed. 305, 38 L.R.A. (N.S.) 1139, 32 Sup. Ct. Rep. 105. The state is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes.' See Quong v. Kirkendall, 223 U.S. 59, 62, 63, 56 L. ed. 350-352, 32 Sup. Ct. Rep. 192. Thus defined and thus limited, it is a vital principle, giving to government freedom to meet

its exigencies, not binding its action by rigid formulas, but apportioning its burden, and permitting it to make those discriminations which the best interests of society require.' "

As otherwise stated in

Watson et al., Executors of Watson v. State Comptroller of the State of New York (1920), 252 US 122, 124-125; 41 Sup. Ct. Rep. 43; 65 L.ed 170:

"* * * Any classification is permissible which has a reasonable relation to some permitted end of governmental action. * * * It is enough, for instance, if the classification is reasonably founded in 'the purposes and policy of taxation.' * * * "[8]

Petitioner in its equal protection argument ignores the distinction clearly drawn by this Court between the classification problem posed by the intergovernmental immunity decisions and the equal protection decisions[9] which distinction was noted by this Court in *Phillips Chemical Co.* v. *Dumas Independent School District, supra,* (1959) 361 US

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[8]

To the same effect are the following three cases: *Williamson, Attorney General of Oklahoma, et al., v. Lee Optical of Oklahoma, Inc., et al.,* (1954) 348 US 483; 75 S Ct 461; 99 L ed 563; *Kotch et al., v. Board of River Port Pilot Comm'rs for the Port of New Orleans et al.,* (1946), 330 US 552; 67 S Ct 910; 91 L ed 1093; and *McGowan et al., v. Maryland* (1961), 366 US 420; 81 S Ct 1101; 6 L ed 2d 393.

[9]

This distinction accounts for the differences in results reached by the Supreme Court of Michigan in the cases of *Knapp-Stiles v. Department of Revenue, supra,* (1963), 370 Mich 629; 122 NW 2d 642 and *Walter Toebe & Co. v. Revenue Department, supra,* (1967), 378 Mich 617; 148 NW 2d 775.

376; 80 S Ct 474; 4 L ed 2d 384, and by the Michigan Supreme Court in the *Toebe* cases.

The petitioner cannot establish—and the Michigan Supreme Court properly rejected his argument as *amicus curiae* in the *Toebe* cases—that the legislative classification results in unconstitutional discrimination.

III.

THE ORDER OF THE COURT OF APPEALS FROM WHICH APPEAL IS SOUGHT IS CONCLUSIVE.

The Order of the Michigan Court of Appeals here questioned simply held that the *Toebe* cases were dispositive of petitioner's Complaint in this cause. The Michigan Supreme Court declined to disturb such holding by denying petitioner's Application for Leave to Appeal. In the Michigan Court of Appeals, the petitioner sought to distinguish its Complaint from the *Toebe* cases by arguing that unlike *Toebe*, he is entitled to have § 4(m) of the Michigan Use Tax Act, as amended by Act 272 of the Michigan Public Acts of 1959, declared unconstitutional on authority of *Phillips Chemical, supra.*

For reasons heretofore indicated, the *Toebe* cases were correctly decided by the Supreme Court of Michigan on authority of clear precedent of this court. Also, *Phillips Chemical, supra,* conclusively adjudicates the intergovernmental question contrary to petitioner's position.

CONCLUSION

Petitioner, in requesting this Court to review the Michigan Court of Appeals' Order of September 18, 1967, erroneously assumes that he can properly place before this

Court for its consideration the question of whether § 4(m) of the Michigan Use Tax Act, as amended by Act No. 272 of Michigan Public Acts of 1959, unconstitutionally discriminates against him.

The Michigan Court of Appeals, in granting the Peremptory Order in question and the Michigan Supreme Court in denying petitioner's Application for Leave to Appeal determined that the Supreme Court of Michigan's decision in the *Toebe* cases, *supra,* is dispositive of this cause. In so doing, it necessarily concluded that the rule in the *Toebe* cases, *supra,* and not that of *Knapp-Stiles,*[10] *supra,* or *Phillips, supra,* constituted controlling precedent. As herein indicated, petitioner's effort to distinguish his cause from *Toebe, supra,* and to bring himself under the immunity umbrella of *Phillips, supra,* lacks substance.

In addition, the petitioner attempts here to raise the equal protection question. It is clear that the equal protection question lacks appropriateness and substance.

It is further noted that irrespective of the nature and scope of the intergovernmental immunity and equal protection arguments of the petitioner, still there is no basis for its argument that the Michigan Court of Appeals' Peremptory Order here appealed from results in any unconstitutional discrimination against the petitioner.

Petitioner fails to show in his petition how a federal

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[10]

Petitioner's cause is controlled by classification cases such as *Allied Stores v. Bowers* (1958) 358 US 522; 3 L ed 2d 480; 79 S Ct 437, and not the intergovernmental immunity cases, such as *Phillips Chemical v. Dumas, supra. Knapp-Stiles, supra,* deals with intergovernmental immunity, as does *Phillips, supra,* while the Toebe cases simply deal with a state's power to classify under the Fourteenth Amendment which is controlled by *Allied Stores, supra.*

question is presented. To the contrary, he shows a question which lacks importance to this Court.

RELIEF

THEREFORE, it is respectfully requested that this Court deny the Petition for Writ of Certiorari to the Court of Appeals of the State of Michigan.

Respectfully submitted,

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